

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAR - 1 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 96-6
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

DOCKET FILE COPY ORIGINAL

COMMENTS OF OMNIPOINT CORPORATION

Mark J. O'Connor

Piper & Marbury L.L.P.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036
(202) 861-3900

Its Attorney

No. of Copies rec'd
List ABCDE

Date: March 1, 1996

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY... ..	ii
DISCUSSION	2
I. PCS Includes Both Fixed and Mobile Services.....	2
A. The Commission Has Established That PCS Should Be Flexible to Consumer Demands for Local Telecommunications Services	3
B. Fixed Wireless Networks Will Be A Great Public Benefit ...	5
C The Offering of Wireless Local Loop or Other Fixed Service Does Not Alter the PCS Provider's Status as a CMRS Operator	6
II. PCS Operators Should Be Permitted to Offer Any Form of Fixed or Wireless Services.....	7
III. FCC Should Defer Universal Service Issues to Telecommunications Act Proceedings	9
CONCLUSION.....	10

SUMMARY

Omnipoint strongly endorses the Commission's tentative conclusions to permit PCS licensees to offer fixed services. The Commission's flexible approach to the multitude of services that include PCS has been a consistent hallmark of PCS regulations, and the Commission should continue that approach by freeing PCS providers to offer a full array of fixed services demanded by customers. The Commission should permit PCS operators to base their provision of fixed and mobile services on the market demands, changes in technology, and the evolution of local loop competition. In fact, because customers themselves can establish a fixed station with their mobile unit, it is simply not practical to require operators to police the mobility of customer equipment. Permitting PCS operators the flexibility to offer fixed services to meet market demand should not alter those operators' status as CMRS licensees.

Significant public benefits can be obtained through PCS provision of fixed wireless services. Fixed wireless local loop can add much-needed competition to the local loop, in furtherance of the public goals set by both the Commission and Congress. In addition, wireless access can also offer consumers, home owners, and landlords an alternative to inside wiring; wireless access can be PSTN cheaper and more reliable in many cases. Fixed wireless services can also provide data transport and information services in competition with the LEC; high-speed wireless data transport can be provisioned in many locations where it is otherwise not affordable or not available from the incumbent LEC.

Consideration in this docket of the complex issues surrounding universal service will inevitably slow the much-needed regulatory reform to permit PCS operators to compete effectively with the incumbent LEC. Therefore, universal service issues should be deferred to the comprehensive upcoming universal service proceedings required under the 1996 Telecommunications Act.

For these reasons, and as explained more fully in the comments, Omnipoint urges the Commission to act expeditiously to allow PCS operators to provide a full range of fixed services.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED
MAR - 1 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of the Commission's Rules)	WT Docket No. 96-6
To Permit Flexible Service Offerings)	
in the Commercial Mobile Radio Services)	

COMMENTS OF OMNIPOINT CORPORATION

Omnipoint Corporation, by its attorneys, files these comments in response to the Commission's January 25, 1996 Notice of Proposed Rulemaking, FCC 96-17 ("NPRM") in the above-captioned docket.

Omnipoint respectfully submits that in many cases PCS operators can best serve the public by offering a mix of mobile and fixed services. Because the market for PCS is still nascent, it is impossible to predict the exact mix of fixed/mobile service that will be demanded by the public. Further, PCS service offerings will certainly change over time as operators build-out their systems, new technology changes PCS capabilities, and additional competition further invigorates the local exchange market. Omnipoint strongly supports the Commission's tentative conclusion that PCS operators should be permitted to offer fixed wireless local loop services, NPRM at ¶ 1, and urges the Commission to permit PCS operators to offer any fixed service, with the operator itself setting the proper mix of fixed and mobile services based on market demand.

To accomplish this regulatory flexibility, the Commission should amend 47 C.F.R. § 24.3 to permit use of PCS spectrum for either fixed or mobile services, or a combination of fixed and mobile services. The Commission should not attempt to regulate the proper mix of fixed and wireless services offered because that determination will vary based on a number of factors, including differences in consumer preferences, operators' marketing and deployment plans, the

evolution of competition in markets (and different levels of competition in various markets), and changes in technology. There is no sound reason for the Commission to establish a minimum mobile service requirement based on one set of market assumptions, only to constantly revisit that decision as the market and technology changes.

Indeed, it is currently impossible for the *operator* of a wireless network to even know whether its customers use their subscriber units for a fixed application, since the customer can easily convert from mobile to fixed by putting a handset into a docking cradle. The assumption that operators should police their customers and remove non-mobile units seems flatly inconsistent with the pro-competitive philosophy of the Commission and the 1996 Telecommunications Act. Instead, the Commission's rules should acknowledge the existing realities of the marketplace and the available technologies, and allow PCS operators to proactively respond to consumer demand. Omnipoint urges the Commission to reform its PCS service rules and allow PCS operators -- poised to establish alternative wireless local networks -- to provide a full array of services, both mobile and fixed, as the market demands.

DISCUSSION

I. PCS Includes Both Fixed and Mobile Services.

As the Commission notes at ¶ 5 of the NPRM, the current definition of permissible PCS communications¹ has left operators uncertain as to how aggressively to deploy a network that includes fixed services competing with the wireline Local Exchange Carrier. Unfortunately, the carriers most seriously affected by the uncertainty are smaller and independent PCS operators who may be forced by financial realities to take a conservative view on regulatory reform. Understandably, some carriers may be reluctant to make the enormous investments in equipment

¹ 47 C.F.R. § 24.3 ("PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided only if ancillary to mobile operations. Broadcasting as defined by the Communications Act is prohibited.").

and marketing for fixed PCS given that the extent of fixed services permissible under the PCS Commission's rules is ambiguous. The public is also disserved by any delay in the introduction of new fixed services and disruption to existing PCS services. Omnipoint believes that the Commission's current definition should be revised to uphold the Commission's real intent for PCS.

A. The Commission Has Established That PCS Should Be Flexible to Consumer Demands for Local Telecommunications Services.

The Commission has consistently extolled the benefits of PCS entry into both fixed and mobile telephony. Even in the nascent stages of PCS, the Commission noted and encouraged PCS experimentation for wireless services that compete with the LECs' traditional wireline monopoly. *See, First Report and Order*, ET 92-9, 7 FCC Rcd. 6886, 6886 (1992) (PCS experimental advances included "mobile facsimile, wireless private branch exchange, and wireless area networks"). Indeed, in reallocating the 2 GHz band for broadband PCS, the Commission noted that "it is important that the emerging technology bands be able to meet the requirements of a significant number of new services and to support the operation of mobile, *as well as fixed*, operations."² Again in the *Second Report and Order*, GEN Docket No. 90-314, 8 FCC Rcd. 7700, 7702 (1993), which set the initial framework for PCS licensing, the Commission emphasized that "[t]he regulatory plan embodied in the new PCS rules will provide licensees . . . the maximum degree of flexibility to introduce a wide variety of new and innovative telecommunications services and equipment."

Since the establishment of the band plan and the initial service rules, the Commission has demonstrated its willingness to provide such flexibility, even with the current "ancillary to mobile"

² *Id.* at 6888 (emphasis added). While the *NPRM* at ¶ 12 suggests that the rationale for keeping fixed services ancillary to mobile service was to protect the limited spectrum available for mobile uses, the Commission's precedent does not suggest that the Commission intends to exclude the use of wireless fixed services in competition with the LEC incumbent, where the market demands it.

rule constraint. The Chief of the Commission's Wireless Bureau has explained that fixed communications such as "links connecting PCS base stations and other network operations facilities; transmission of PCS network control and signaling information; and facilities linking users' premises to PCS networks" fall within the meaning of ancillary fixed uses of PCS spectrum.³ More recently, the Commission has also noted that "wireless local loop service could be provided in spectrum allocated for broadband PCS in the 1850-1990 MHz band."⁴ The Commissioners themselves have also publicly stated the Commission's vision of PCS providers as "raiders of the local loop."⁵

Finally, permitting PCS operators to offer a competitive mix of mobile and fixed services as the market demands comports with the Commission's regulatory objectives for all CMRS: "[t]he rise of competitive forces . . . has been made possible . . . by the Commission's deliberate dismantling of an old regulatory structure, which emphasized service classifications, and the creation of a new structure whose hallmark is flexibility, with regulation focused on protecting

³ Letter of Regina M. Keeney, Chief, Wireless Telecommunications Bureau to A. Thomas Carroccio (November 5, 1994). Omnipoint notes that if fixed "facilities linking users' premises to PCS networks" is already permitted under the Commission's rules, this would seemingly allow most, if not all, wireless local loop services. Nonetheless, Omnipoint strongly endorses a change to the Commission's existing rules to fully clarify that any fixed commercial service (aside from broadcasting) is permitted.

⁴ In the Matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, First Report and Order and Second Notice of Proposed Rulemaking, ET Docket No. 94-32, 10 FCC Rcd. 4769, 4781 (1995).

⁵ "Hundt Calls Wireless Industry 'Dawn of New Age of Competition,'" Washington Telecom News, Feb. 6, 1995 (Speaking before the CTIA convention, Chairman Hundt called on PCS and other wireless operators to be "the raiders of the local loop."); *see, also*, "A Camelot Moment -- the Telecommunications Act of 1996," Remarks of Commissioner Rachelle B. Chong before the FCBA, Midwest Chapter (February 15, 1996) (Commissioner Chong envisions that "[e]very home, business, school, library and health care facility will have access to multiple communications providers, at reasonable prices. The paths that deliver these communications services may be wired, wireless, or perhaps both.").

consumers by stimulating competitive forces." *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report*, 10 FCC Rcd. 8844, 8872 (1995). Omnipoint urges the Commission to stay the course for maximum flexibility by allowing PCS licensees to meet market demands for services without concern for the blurry regulatory distinctions between "mobile" and "ancillary to mobile."

B. Fixed Wireless Networks Will Be A Great Public Benefit.

Regulations that encourage the development of alternative, competing providers for local telecommunications services are, without question, a public interest priority for both the Commission and Congress. *NPRM* at ¶ 8; 47 U.S.C. § 253 (1996).⁶ PCS Fixed wireless local loop services can implement those policy goals.

In addition, fixed wireless local loop can offer a more efficient and flexible alternative to inside wiring for consumers and landlords. In a wired network, the landlord and its tenants (either business or residential) must pay for the costs of inside wiring. This requires landlords or home owners to wire buildings, and tenants must arrange for PBX wiring. A wireless connection from the end user to the CMRS MTSO, however, offers consumers, home owners, and landlords another option that is tremendously flexible. Large office buildings could be provided with access to the PSTN at lower costs than it would take to wire the entire building for telephone, facsimile and computer access. Older homes with inferior wiring that cannot be easily replaced can be more efficiently upgraded through wireless access. With wireless access, the customer also has the flexibility to move personnel and equipment or to upgrade to more high-speed data transport, such as from POTS to ISDN, without incurring the costs of new inside wiring.

⁶ See, also, Remarks Given By Michelle Farquhar, Acting Chief, Wireless Telecommunications Bureau to NARUC Committee on Communications, February 28, 1996 ("Wireless Bureau is placing a special priority on working with the Common Carrier Bureau in establishing the policy steps to facilitate the development of local exchange competition.").

Wireless access from the CPE to the network is also an option consumers may choose for public safety reasons. For example, wireless networks are often better able to recover quicker from a natural catastrophe to provide essential communications links than the wireline networks.

For these reasons, consumers and businesses should have the opportunity to benefit from wireless access.

C. The Offering of Wireless Local Loop or Other Fixed Service Does Not Alter the PCS Provider's Status as a CMRS Operator.

At ¶ 20 of the NPRM, the Commission proposes that a PCS provider's regulatory classification as CMRS should remain unaltered "so long as the carrier otherwise offers interconnected, for-profit mobile service to the public." While Omnipoint agrees that all PCS operators offering mobile service should be deemed a CMRS provider for regulatory purposes, the Commission's implied constraint -- the offering of at least some nominal mobile service -- is unnecessary. Rather, CMRS status should apply *per se* to all PCS licensees, regardless of the operator's or customer's particular mix of mobile and fixed services at any given moment. As noted, the operator could not even practically police customers to ensure prescribed percentage of mobile service or limit on fixed service.

This regulatory flexibility for PCS operators is consistent with the definition of commercial mobile service under the Communications Act. Under the Act, "commercial mobile service" has two broad components. First, it must be commercial, interconnected with the public switched network, and made available to the public. 47 U.S.C. § 332(c)(1)(A). Second, it must be a mobile service, which is specifically defined to include "*any service* for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services, (GEN Docket No. 90-314; ET Docket No. 92-100), or any subsequent proceeding.'" 47 U.S.C. § 153(n)(3) (emphasis added). Therefore, the offering of fixed services by a PCS licensee does not in any way change the licensee's statutory status as a "commercial mobile service" provider. We also note that, unlike the

Commission's regulation, the Act does not limit the amount of fixed service to be offered by the PCS provider, or impose an "ancillary to fixed" requirement. *See, id.*, at § 332(d).

More importantly, with a flexible definition of permissible PCS services, the essential characteristics of PCS as CMRS remain unaltered. PCS operators will still have the ability to offer mobile service using their licensed spectrum. In addition, PCS will remain an interconnected, common carrier service offered to the public. The essential difference proposed by Omnipoint from the Commission's tentative conclusion is to permit the PCS operator to decide exactly how to use the licensed spectrum, based on market demand. If, in some markets, the operator or the customers determine that a completely fixed offering is most advantageous, the Commission's rules should not artificially inhibit such a market determination.⁷

II. PCS Operators Should Be Permitted to Offer Any Form of Fixed or Wireless Services.

At ¶ 22 of the NPRM, the Commission seeks comment on whether CMRS providers should be permitted to offer other services, such as "Internet access, electronic funds transfers, point-of-purchase credit card verification, and remote monitoring," in addition to wireless local loop. Omnipoint respectfully submits that there is no justification for limiting PCS entrants from offering a full panoply of local telecommunications and information services. Both the vision of PCS established by the Commission and the realities of competing with the local incumbent require that PCS operators offer any fixed service demanded by the market.

Moreover, permitting the deployment of fixed wireless services, including a full array of information services, will be a great public benefit for consumers. It will allow much-needed

⁷ The Commission's tentative approach would seemingly declassify only operators that choose to offer completely fixed service. While this situation could well represent a small fraction of all PCS operators, there is no reason to force those few operators to maintain a token mobile offering for regulatory purposes where they would otherwise choose to go fully fixed, if that is what their customers want.

competition for local voice telephony services. It will also allow CMRS operators to offer data and information services to businesses and individuals who, until this time, have had limited choices of local access providers. For example, Omnipoint's technology, IS-661, has been designed to offer wireless data capabilities that are compatible with users' ISDN applications. This will provide consumers with alternative and competitive offerings for such services in areas where the LEC has traditionally been the only local provider of high-speed data transport. Perhaps more importantly, in locations where the LEC has been unwilling or unable to offer high-speed data transport such as ISDN, the CMRS provider may be the area's only resource for effective data communications. Conversely, it would be unfortunate, indeed, if the Commission's rules effectively permitted high-speed data transport to a *mobile* terminal but, once that same user returned to a *fixed* location, such as a home or office, he/she could no longer have the same access.

The opportunities for LECs to package a host of both mobile and fixed services, as provided by the 1996 Telecommunications Act, also underscore the need to remove the current "ancillary to fixed" regulatory limitations on competing PCS providers. Under the recent revisions to the Communications Act, the LEC is permitted to jointly market its CMRS, wireline local loop, intraLATA toll, interLATA long-distance, and information services. Telecommunications Act of 1996, Section 601(d). In effect, the incumbent LEC may soon bundle its cellular or PCS offering with wireline local exchange service and long-distance to become a "one-stop shop" for consumers.⁸ While consumer convenience is commendable, the current regulatory restriction against a competing PCS operator from even offering that same flexible combination of services may significantly diminish the competitive impact of PCS on the local telecommunications market, contrary to the Commission's and Congressional intent. *See, also*, Telecommunications Act of

⁸ At least one RBOC has already announced plans to take advantage of the new law and market wireline with wireless services. Communications Daily, Feb. 22, 1996, at 6. (Southwestern Bell plans to market with one organization its telephone service and mobile systems to provide "one-stop shopping for communications services.").

1996, Section 401 (*to be codified at* 47 U.S.C. § 160) (public interest favors FCC forbearance from regulation that promotes competition among telecommunications service providers).

Unless a given mobile market were to become completely saturated by competitors, a PCS operator, as a business matter, would not typically choose to offer exclusively fixed service on its spectrum, and turn away mobile service customers. By offering only fixed and no mobile service, the operator would effectively cut itself out of the explosive growth of the mobile telephony market; with other competitors offering comprehensive service options, a fixed-only service may be an unattractive or impractical choice for consumers. Omnipoint seriously doubts that PCS providers would typically operate in this manner. Rather, PCS operators must be allowed to offer *both* mobile and fixed to compete effectively. Moreover, the continuing deployment of cellular digital technology, the introduction of 120 MHz of PCS spectrum into the market, the development of SMR service, as well as possible direct broadcast satellite service make it very unlikely that demand for mobile service will go unmet by the market.

III. FCC Should Defer Universal Service Issues to Telecommunications Act Proceedings.

At ¶ 21 of the NPRM, the Commission seeks comment whether universal service issues should be considered in this proceeding if CMRS providers are permitted to offer fixed local loop services. The Commission also suggests that it is preferable to deal with those universal service issues in ongoing and pending universal service proceedings.

Omnipoint believes that it may frustrate rapid deployment of PCS networks to attempt to address the complex issues involved with universal service obligations and support payments in the context of this proceeding. Because fixed wireless services will offer consumers a competitive choice of local exchange carriers, it is far more important for the Commission to act expeditiously in this proceeding to establish that PCS operators may offer a mix of mobile and fixed services, based on the demands of the market. The complex universal service issues, on the other hand, have not been fully explored in the one paragraph of the NPRM, and consideration of those issues in this proceeding will likely impede the swift regulatory changes that are needed.

Moreover, the Telecommunications Act of 1996 directs the Commission to engage in several broad rulemaking proceedings, in conjunction with the Joint Federal-State Board, to reform the current universal service regime. Telecommunications Act of 1996, Section 101 (*to be codified at* 47 U.S.C. § 254). The legislation provides the Commission with several concrete policy objectives and many requirements that will have to be fully considered as to CMRS operators. *See, e.g., Id.* at §§ 254(b)(universal service principles), 254(d)(all telecommunications carriers engaged in interstate traffic shall contribute to universal service, except where contribution is *de minimis*), 254(e) (only eligible, designated carriers may receive universal service support), 254(k) (carriers receiving universal service support may not cross-subsidize services that are competitive with other carriers). We note also that the Commission's and the Wireless Bureau's tentative schedules for implementation of the 1996 Telecommunications Act contemplate a comprehensive and expeditious consideration of universal service issues.⁹

Therefore, Omnipoint believes that the Commission should defer universal service issues until upcoming rulemakings to implement the 1996 Telecommunications Act.

CONCLUSION

The Commission should move expeditiously to remove existing regulatory barriers that inhibit PCS operators from deploying a fully competitive local exchange service by permitting all operators to offer a mix of fixed and mobile service. The Commission should not attempt to set any limits on the range or mix of fixed to mobile services, but rather should allow the PCS operator to

⁹ "Draft FCC Implementation Schedule for S. 652, 'Telecommunications Act of 1996,'" (released February 12, 1996); "Wireless Bureau Releases Work Plan on the Implementation of Telecommunications Act of 1996," (released February 15, 1996).

react freely to the market. Because universal service involves complex issues that will soon be addressed in a more comprehensive manner, the Commission should defer those issues to the later proceedings and move swiftly to reform the regulations that currently impair the introduction of fixed wireless services.

Respectfully submitted,

OMNIPOINT CORPORATION

A handwritten signature in black ink, appearing to read "Mark J. O'Connor", is written over a horizontal line.

Mark J. O'Connor

Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Seventh Floor
Washington, D.C. 20036
(202) 861-3900

Its Attorney

Date: March 1, 1996